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\* ADMITTED IN CA AND NJ

January 10, 2013

**BY HAND**

The Honorable Shira A. Scheindlin  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: FILB Co-Investments LLC v. United Community Banks, Inc.,  
12 CV 5183 (S.D.N.Y.) (SAS)

Dear Judge Scheindlin:

We represent defendant United Community Banks, Inc. ("UCBI") in the above-referenced action. Pursuant to Part V.B.2 of Your Honor's Individual Rules and Procedures, we write to request that Your Honor enter an order compelling non-party Fletcher Asset Management, Inc. ("FAM") to comply with a subpoena *duces tecum* that UCBI duly served on FAM at its Manhattan offices two months ago.

**Background**

UCBI served a subpoena *duces tecum* on FAM on November 7, 2012 and a corrected subpoena *duces tecum* on FAM on November 13, 2012 (together, the "Subpoena"). As confirmed by affidavits of service, the original subpoena was served upon Gerti Muho of FAM, and the corrected subpoena was served upon Giacomo LaFata of FAM. The return date on the Subpoena was December 7, 2012. FAM failed to respond or object to the Subpoena by that date. Nor did FAM make any effort to contact

Non-party Fletcher Asset Management must respond to this letter by late this January 16, 2013. If no response is received in order to compel production of documents will be issued. So Ordered, JMS/AL 1/10/13

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UCBI to obtain an extension. On December 20, 2012, we sent FAM a letter, delivered by hand, requesting that it respond promptly to the Subpoena and inviting FAM to contact us to discuss the Subpoena. FAM did not respond to our letter.


The Disclosure Sought from FAM Is Directly Relevant  
to the Parties' Claims and Defenses and Not Otherwise Obtainable

The claims asserted herein by plaintiff FILB Co-Investments LLC's ("FILBCI"), concerning alleged breaches by UCBI of a Securities Purchase Agreement ("SPA") between UCBI and non-party Fletcher International, Ltd. ("Fletcher"), were purportedly assigned by Fletcher to FILBCI. At all relevant times, FAM was the manager and investment adviser of Fletcher (which is now in bankruptcy). In that capacity, FAM not only negotiated the SPA on behalf of Fletcher, it also directed Fletcher's course of performance under the SPA. FAM is therefore likely to have documents that concern both of these subjects. Such documents would be probative of core issues in this action, including the parties' intent when entering into the SPA, the interpretation of the SPA, and the facts and circumstances underlying the claims purportedly assigned to FILBCI. Our current understanding is that FILBCI has few, if any, of these documents.

For these reasons, UCBI's Subpoena to FAM was necessary and appropriate, and FAM's disregard of the Subpoena is indefensible. Instead of responding to the Subpoena, objecting to it, or seeking to quash or modify it in accordance with FED. R. CIV. P. 45(c)-(d) (although UCBI in no way concedes that any objection to the Subpoena would be well founded), FAM has simply ignored the Subpoena. FAM has also ignored our December 20 letter, in which we urged it to comply with the Subpoena and invited FAM to contact us to discuss it. In view of this history, it is almost certain that FAM will not comply with the Subpoena absent an order of this Court.

Accordingly, we respectfully request that the Court enter an order compelling FAM to produce all documents in its possession, custody, or control that are responsive to the Subpoena, and granting such other relief as the Court deems just and proper.

Respectfully,

  
Jason C. Rubinstein

cc: Douglas J. Pepe, Esq., counsel for plaintiff FILB Co-Investments LLC (by hand)

Fletcher Asset Management (by hand)  
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